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No. 03-743

Supreme Court, U.S.
FILED
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In the
Supreme Court of the United States

OCTOBER TERM, 2003

ED FINKELSTEIN, *pro se*, HELEN HERMAN, INC.,
A Delaware Corporation,
Petitioners,

v

CITY OF TUCSON and PIMA COUNTY, Arizona,
WILLIAM HAILE, and M/M EDWARD FLORENCE
Respondents.

Petitioner's Supplemental Brief

On Petition for Writ of Certiorari

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Pursuant to Rule 22.6, Petitioner Ed Finkelstein, acting *pro se* and in a stockholders' derivative capacity, files this Supplemental Brief calling attention to (1) the fact that the City of Tucson and Pima County improperly waived their right to file briefs in opposition and (2) other intervening matters. *Tiverton Bd. of License Comm'rs v. Pastore,* 469 U.S.---(1985); *Fusari v. Steinberg,* 419 U.S. 379, 391 (1975). ("Counsel have a continuing duty to inform the Court of any development which may conceivably affect the outcome" of the case.)

Respondents Admit the Facts and Issues in the Petition And Waive Their Right to File Briefs in This Case

The waivers[1] are improper and, by default, admit the facts and issues in the Petition. Supreme Court Rule 15 states:

> Counsel are admonished that they have an obligation to the Court to point out any perceived misstatements in the brief in opposition *and not later.* Any defect of this sort in the proceedings below that does not go to the jurisdiction may be deemed waived if not called to the attention of the Court by the respondent in the brief in opposition. (Emphasis added.)

In fact, Respondents do not claim in their waivers that the opinion of the Arizona Court of Appeals is sufficient and does not warrant review.

> In order that the waiver will clearly be understood as based upon the lack of merit in the petition, the statement filed with the Court... should contain language to [that effect]. *Supreme Court Practice*, Sixth Ed., Robert L. Stern, *et al,* at 392. (Emphasis added.) (*Kotrich v. DuPage County,* 364 U.S. 475 (1960).

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[1] I have not received a copy of the City's waiver. I assume it is similar to the County's, which I received on December 26th.

The constitutional taking, which the Court of Appeals tacitly acknowledged, but glossed over (Decision, par. 2), the Respondents' appalling violations of this Court's precedents and the Full Faith and Credit Clause, the ruthless deprivation of ***all*** due process, their RICO infractions, etc. are substantial federal questions warranting review.

Thus, since Respondents ask to reinstate their right to file briefs if the Court requests, their waivers are obviously motivated by a wait-and-see gamble based on the small percentage of petitions that are granted certiorari, *not on any perceived deficiency of the Petition itself.*

Thus, the waivers are a blatant misuse of procedure. For the Respondents cannot refute the Petition, just as they could not refute *any* fact, law or issue I cited below, so they resort to their *modus operandi* —deceit and circumvention of the rules, hubristically putting the burden on the Court to *force* them to answer.

In doing so, they expose their lack of professional and ethical fitness to practice before this Court and waive their right to file briefs under Rule 22.1. They also corroborate their RICO mentality.

Indeed, the Respondents appear *not* to have complied with Supreme Court Rules 5 and 9, which require them *first* to be admitted to practice before this Court before filing a document. I would prove with ample evidence that they are *un*qualified morally and professionally to practice before this Court.

A Veritable Coalition Insures That the State Apparatus Does Not Hold the Respondents Accountable

Since I filed my Petition, I have discovered a formidable supporting cast in the City's theater of operations:

(1) The State Board of Appraisers and the State Bar coddle miscreants. The Board summarily denied my fully-supported complaint against the City's appraiser for violating the Uniform Standards of Professional Appraisal Practice—the law—without requiring the appraiser to answer and without giving a reason;

The Bar holds that its unpublished standards allow "a large gray area in which attorneys may operate" and did not apply the Supreme Court Rules of Professional Conduct. Thus, the Bar refused to file a formal complaint against my attorney despite the fact that ***he admitted,*** by not denying in his answer to my complaint, that he committed forgery, collusion and fraud;

(2) The State Attorney General falsely claimed that its only responsibilities under the law are to defend agencies of the State;

(3) The State Office of Ombudsman for Private Property Rights has been abolished for condemnations by municipalities. The Office covers only condemnations by the State;

(4) The Tucson Police Department does not consider the fraudulent "Stipulation for Immediate Possession" to be a forgery because my attorney signed his name, not mine, on the document even though he signed it against my orders and he and the City represented to the court that it was a "consent between the parties."

(5) A city councilman, Steve Leal, turned down my suggestion that the City should have an ethics commission because he falsely argued that morality cannot be legislated.

Thus, a protective cocoon allows the City and County to *confidently* commit violations of constitutional property rights without redress.

Certiorari would wean the Respondents from harvesting fraud and due process abuse and end what clearly are RICO operations.

Finally, I inform the Court that I must be abroad from mid-January to mid-February and call attention to my new mailing address.

RESPECTFULLY SUBMITTED January 2, 2004.

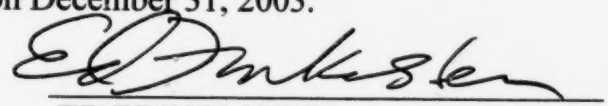
ED FINKELSTEIN
Petitioner *pro se*
And in a derivative capacity

Proof of Service

I hereby state that I served all of the Respondents named in this Petition by first-class mail on January 3, 2004, at the addresses listed below.

Pursuant to Rule 29(5)(c) and 28 U.S.C. Sec. 1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on December 31, 2003.



ED FINKELSTEIN,
Petitioner

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